SUPREME COURT OF THE UNITED STATES.

No. 130.

HENRY WHITE AND JAMES STEVENS, MERCHANTS, TRADING UNDER THE FIRM OF WHITE, STEVENS & CO., PL'TFFS IN ERROR,

vs.

PASCHAL ROSE'S ADM'RS.

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GIDEON, print.

CIRCUIT COURT OF THE UNITED STATES,
Fifth circuit and eastern district of Louisiana.

A transcript of the record and proceedings in the case of

WHITE, STEVENS & Co.
vs.
PITRE & ROSE. } No. 1988.

Be it remembered that heretofore, to wit, on the 30th day of December, A. D. 1850, White, Stevens & Co., by their attorney, Charles A. Taylor, came into the clerk's office of said court and filed therein their petition in the words and figures following, to wit:

WHITE, STEVENS & Co.
vs.
PITRE & ROSE.

To the honorable the fifth circuit court of the United States, in and for the eastern district of Louisiana.

The petition of Henry White and James Stevens, merchants, trading under the firm of White, Stevens & Co., and who aver that they are citizens of the State of Pennsylvania, residing at Philadelphia in said State, respectfully shows, that Maturin Pitre and Paschal Rose, who are citizens of the State of Louisiana, residing in the parish of Lafourche Interior, are justly indebted to petitioners in the sum of six thousand and ninety dollars and seventy-five cents, ($6,090 $\frac{75}{100}$,) for this, to wit: that your petitioners have been for several years the factors and commission merchants of said defendants, and in the habit of making advances and furnishing supplies to them in consideration of the consignment to petitioners for sale of the crops of said defendants raised on their plantations, which crops your petitioners have received from year to year, and have sold and accounted for, receiving the usual commission for such services. That in continuation of said agreement and course of business, the said defendants on or about the day of March, 1850, applied to petitioners for further advances, and offered, in case your petitioners would make and furnish the same, that they would consign the crop of the present year, 1850, to petitioners for sale, and that petitioners should receive thereon the usual commission; that petitioners accepted said offer, and it was thereupon fully agreed and understood between your petitioners and said defendants that said advances should be made and said crop be consigned as above stated; that it was also agreed and understood between your petitioners and said defendants that petitioners should receive the usual commission of 2½ p. c., and interest at the rate of 6 p. c. per an., on all advances made. But your petitioners do further aver that they have, on their part, fully and fairly complied with all the stipulations by them assumed in said agreement; that they have, at the instance and request of said

defendants, made advances amounting with the commission of 2½ p. c. to four thousand nine hundred and twenty dollars and thirty cents, as the whole is more fully shown by the bill of items annexed; but that the said defendants have not complied with the said agreement, but on the contrary have refused to perform the same, though requested, and in violation thereof have consigned their said crop to other persons residing in New Orleans, to wit, to Cammack & Squires, a firm trading in New Orleans, residing in said city and citizens of Louisiana. And your petitioners further show, that said advances were made by drafts of said defendants, drawn upon and paid by petitioners, the amounts whereof are stated in the bill of items annexed, and which original drafts will in due time be filed and produced, and by a balance carried over, and by money paid for sundry articles for said defendants, all of which will appear in the bill of items annexed; and that said advances amount, with the usual commission of 2½ p. c., to the sum of four thousand nine hundred and twenty dollars and thirty cents or upwards; that the stipulated interest of 6 p. c. per an. on the same up to November 1st, 1850, amounts to four hundred and twenty dollars and forty-five cents, ($420 45,) or upwards; and that the crop of said defendants for the present year is worth the sum of fifteen thousand dollars or upwards, and that the commission usual in Philadelphia is five p. c. on the amount thereof, and answering to the further sum of seven hundred and fifty dollars, ($750,) making together the sum of six thousand and ninety dollars and seventy-five cents due to petitioners as above demanded.

Wherefore petitioners pray that said defendants be cited to appear and answer this petition, and be condemned to pay to petitioners the said sum of six thousand and ninety dollars and seventy-five cents, with interest from judicial demand, and all further relief required by the nature of the case; and petitioners pray for a trial by jury. And your petitioners, as in duty bound, will ever pray, &c.

CHARLES A. TAYLOR,
Counsel for plaintiffs.

Interest to November 1, 1850.

Messrs. Pitre & Rose in account current with White, Stevens & Co.

Dr.

1849.											
August	17	To balance due November 1, 1849, per account rendered				$2,539 95			Mo.	Ds.	
July	6	To cash paid for sundries			$20 70						
		3 m. 26, and interest to November 1			40	21 10					
November	1	To 2½ per cent. commission on $2,561 05				64 02					
							$2,625 07		12	00	$157 65
	1	To cash paid insurance on sugar and molasses					2 50				
December	1	To sundries					46 99		11	00	2 58
	6	To cash paid M. Pitre's note		8 00		Ex. 8 00	808 00		10	26	43 90
	25	To do sundries		9 86							
				40 60							
							50 46		10	7	2 56
	26	To do dft. favor E. Carlim		365 00		Ex. 2 75	367 75		10	6	18 77
	29	To do dft. favor Solomon		44 00		" 33	44 33		10	3	2 22
1850.											
January	1	To do for lime					5 40		10	00	25
	4	To do dft. favor M. Grimas		200 00		" 1 75	201 75		9	28	10 03
	14	To do for sundries					41 70		9	18	2 02
	17	To do dft. favor H. O. Stephens		64 27		" 64	64 91		9	15	3 09
	18	To do dft. favor E. Jarbon		378 00		3 78	381 78		9	14	18 08
	21	To do for sundries					68 16		9	11	3 18
	24	To do for insurance on sugar and molasses					5 00		9	8	23
	25	To do dft favor J. Niel		26 25		Ex. 26	26 51		9	7	1 20
	28	To do for sundries					43 24		9	4	1 97
February	4	To do for insurance sugar and molasses					2 50		8	28	10
	7	To do for subscription to Delta		3 00		Ex. 03	3 03		8	25	13
	11	To do for sundries					51 65		8	21	2 35
	11	To do for insurance sugar and molasses					2 50				
	21	To do for sundries					38 38		8	11	1 59
	27	To do dft. favor G. Gamsevert		198 87		Ex. 1 97	200 86		8	5	8 21
March	4	To do dft. favor J. M. Denman		175 00							

Account—continued.

March	4	To cash paid	dft. S. Irwin	$130 00							Mo.	Ds.	
	4	To do	dft. G. Jackson	1,000 00	1,005 00		$13 05	$1,318 05	7	28			$52 28
1850.			Carried forward					$6,400 52					$332 39
March	6	To do	dft. favor J. B. Smith	300 00									
		To do	dft. " W. Hall	804 46	1,104 46	Ex.	10 04	1,115 50	7	26			43 86
	7	To do	dft. " P. Marcheas	527 27		"	5 27	532 54	7	25			20 85
	8	To do	dft. " S Cabanes	20 00									
	8	To do	dft. " O. B. Richard	464 53	484 53		4 84	489 38	7	24			19 07
	11	To do	sundries	40 67				40 67	7	21			4 00
	11	To do	dft. favor G. Le Garde	63 00			63	63 63					
	19	To do	E. Murphy	150 00			1 50	151 50	7	13			5 63
	20	To do	dft. J. D. Brown	22 61									
	20	To do	dft. A. B. Ragan	194 37									
	20	To do	dft. T. E. Ewing	51 00	267 98		2 68	270 66	7	12			14 21
	20	To do	for sundries, (M. Pitre)					113 08					
	22	To do	for insurance on sugar house					126 50	7	10			4 63
	26	To do	dft. favor J. Leblanc	31 80		Ex.	31	32 11	7	6			1 15
	28	To do	dft. V. Richard	80 00		"	80	80 80	7	4			2 88
April	20	To do	for sundries					111 96	6	12			3 58
	23	To do	dft. favor J. Honeylin					16 25	6	9			50
July	25	To do	balance of interest					420 45					
								$9,965 55					$452 75
1850.			*Credit.*										
Feb'y	4	By net proceeds, sugar and molasses, per Telegraph, due August 3						2,144 90	2	29			
April	29	By do do do H. R. Hyler, due October 31						2,900 35		1			31 82
July	25	By balance of interest debit											48
		By balance of account do						4,920 30					420 45
								$9,965 55					$452 75
1850.													
July	25	To balance due White, Stevens & Co., to November 1, 1850						$4,920 30					

Philadelphia, July 25, 1850. E. & O. E.

4

Exception, filed February 6th, 1851.

To the honorable the circuit court of the United States, for the fifth judicial circuit and eastern district of Louisiana.

In the matter of the suit of White, Stevens & Co. vs. Pitre & Rose.

Mathurin Pitre and Paschal Rose, who reside in the parish of Lafourche Interior, now come into court and except*s*, and for exception show*s*:

That plaintiffs' suit purports to be on an account, among the items of which are charges for notes and drafts said to have been paid for account of the defendants, which original drafts and notes are not produced, and without which defendants cannot safely answer the said petition.

Wherefore defendants except, and pray judgment whether they be bound to answer further, and that they be hence dismissed with costs.

S. L. JOHNSON, *Attorney for defendants.*

Exception and plea, filed 15th March, 1851.

To the honorable the judges of the circuit court of the United States, for the fifth judicial circuit and eastern district of Louisiana.

The exception and plea of Mathurin Pitre and Paschal Rose, who are citizens of the State of Louisiana, and residents of the parish of Lafourche Interior, respectfully shows:

That the plaintiffs, White, Stevens & Co., have not united with them in this suit; W. W. McMain, who is a citizen of the State of Louisiana, and resident at New Orleans, and who is a necessary party to a full settlement of the accounts on which plaintiffs have brought suit as respondents, will proceed more fully to show; that respondents, who are partners in planting sugar cane in said parish of Lafourche, consigned their crops of the year 1849, and one or more years preceding, to the said W. W. McMain, of New Orleans, and employed him and dealt with him as their factor and commission merchant, and that the said W. W. McMain rendered his accounts of his dealings for and with defendants sometimes in his own name, and sometimes in the name of the plaintiffs; that defendants were thus given to understand and do believe and aver, that the plaintiffs and the said McMain were interested together in the dealings of the said McMain with defendants; and defendants further show and aver, that they had no dealings nor privity with the plaintiffs, except through the said McMain, and as interested with him.

That the account on which the plaintiffs have brought suit was transmitted to defendants at the same time with a separate account which the said McMain had made out in his own name with defendants, on which he acknowledged a balance in favor of defendants; that the said separation of accounts was made illegally and without any authorization, and can have no other object than to enable the plaintiffs to sue the defendants in this honorable court, which would be without juris-

diction if the said McMain were a party to the suit; that the said separation is moreover calculated to harass and oppress defendants with divers suits and jurisdictions, and to defeat the ends of justice; that the transactions involved in the said two accounts were all one business between the same parties, and that defendants are entitled to one full account thereof; that they cannot safely answer to the merits unless all parties be before the court and enable the court to decide the whole matter. Wherefore defendants pray judgment whether they be bound to answer further, and whether this suit should not be dismissed at costs of plaintiffs.

S. L. JOHNSON, *for defendants.*

And on the 21st day of March, 1851, the following entry was made in the minutes:

WHITE, STEVENS & Co. vs. PITRE & ROSE. } 1988.

On motion of C. A. Taylor, attorney for pl'ffs, it is ordered that the exception herein filed be set down to be tried for Saturday, the 29th instant, at 10 o'clock a. m., and that defendants be notified thereof.

And on the 29th day of March, 1853, the following entry was made in the minutes:

WHITE, STEVENS & Co. vs. PITRE & ROSE. } No. 1988.

The exception herein filed by defendants having been assigned for this day, was called up, and the parties not being present, the same was continued indefinitely.

And on the 2d day of April, 1851, the following entry was made in the minutes:

WHITE, STEVENS & Co. vs. PITRE & ROSE. } 1988.

On motion of Charles A. Taylor, it is ordered that the exception in this case be fixed for Saturday next, the 5th instant, and that def'ts be notified thereof.

And on the 5th day of April, 1851, the following entry was made in the minutes:

WHITE, STEVENS & Co. vs. PITRE & ROSE. } 1988.

The exceptions in this case came on to be heard; when, after argument, it was ordered that the same be overruled without prejudice to defendants' right to plead the same matters in his answer on the merits.

Separate answer of Mathurin Pitre, filed 10th April, 1851.

To the honorable the circuit court of the United States, for the fifth circuit and eastern district of Louisiana.

The separate answer of Mathurin Pitre respectfully shows: That he denies all and singular the allegations of plaintiffs' petition; wherefore he prays to be hence dismissed with costs.

S. L. JOHNSON,
Att'y of respondent.

Separate answer of Paschal Rose, filed 10th April, 1851.

To the honorable the circuit court of the United States, for the fifth judicial district and eastern district of Louisiana.

The separate answer of Paschal Rose to the petition of White, Stevens & Co., respectfully shows: That he denies all and singular the allegations of the petition which are not hereinafter specially admitted; and further answering, says: That the account sued on is but a partial and imperfect account of the transactions of plaintiffs with the partnership in planting of Pitre & Rose; that no credit is given thereon for the sum of five thousand five hundred dollars, which the plaintiffs, through their agent, W. W. McMain, collected per account of the said partnership of Pitre & Rose, on the 9th of January, 1850; that usurious charges and compound interest are made in the account sued upon, under the disguise of interest and commissions combined; that on the 10th of March, 1851, respondent caused to be tendered to the plaintiffs the sum of four hundred and fifteen dollars 85 cents, which was the whole amount then due to plaintiffs by the partnership of Pitre & Rose, in principal, interest and costs, without deducting any thing for usurious and compound interest; that deducting the sum of $64 02, and the sum of $157 65, which, under the shape of interest and commission on the sum of two thousand five hundred and sixty-one $\frac{}{100}$, are charged in said account sued on, and are really to be considered as interest alone, and exceed the legal rate of interest, and are therefore wholly forfeited, there remains but the sum of one hundred and forty-eight $\frac{58}{100}$ dollars due by said partnership on the 1st of November, 1850; that respondent, as an ordinary partner, is bound for only one-half of said amount.

Wherefore respondent prays, that in consideration of the tender made on the 12th of March, 1851, respondent be discharged from any further costs accrued subsequently to the date of said tender; and that there be judgment decreeing plaintiffs to be entitled to recover from respondent only the sum of seventy-four dollars 2 cents, as respondent's share of the balance due by the partnership of Pitre & Rose to the plaintiffs on the 1st November, 1850, together with the costs of suit accrued up to the 12th of March, 1851; and that on payment thereof respondent to be discharged from any further demand in the premises.

S. L. JOHNSON,
Att'y of respondent.

And on the 5th day of May, 1851, the following entry was made in the minutes:

WHITE, STEVENS & Co. vs. PITRE & ROSE. } 1988.

On motion of S. L. Johnson, att'y for def'ts, and on suggesting the death of Paschal Rose, one of the said defendants, ordered that this cause be continued.

Supplemental and amended petition—Filed 30th December, 1851.

To the honorable the circuit court of the United States, in and for the eastern district of Louisiana.

The amended and supplemental petition of Henry White and James Stevens, citizens of the State of Pennsylvania, forming and composing the mercantile firm White, Stevens & Co., residing and trading in Philadelphia, respectfully shows: that some time in the latter part of 1850 they instituted in this honorable court a suit, numbered on the docket 1988, against Pitre & Rose, a partnership in planting, and composed of Mathurin Pitre & Paschal Rose, citizens of Louisiana, and residing in the parish of Lafourche Interior; that while on the eve of trial, Paschal Rose, one of the defendants, died, that Lucinda Jane Noble, widow of said Rose, and Caleb J. Tucker, both citizens of Louisiana, and domiciliated in said parish of Lafourche Interior, have been qualified administrators of Rose's estate, and letters of administration have issued in their favor; that your petitioners cannot proceed to trial until said administrators be made parties to this suit.

Wherefore petitioners pray that said Lucinda Jane Noble Rose and Caleb J. Tucker be cited and made parties defendant to this suit, and that after due proceedings had, they, with said M. Pitre, be condemned to pay petitioners' demand with costs; and for further and general relief.

CHARLES A. TAYLOR, *Attorney.*

Order endorsed on amended and supp'l petition: Let this petition be filed.

THEO. H. McCALEB, *U. S. Judge.*

And on the 16th day of February, 1852, the following entry was made in the minutes:

WHITE, STEVENS & Co. vs. PITRE & ROSE. } 1988.

On motion of Taylor, esq., attorney of plaintiffs, it is ordered, that this cause be fixed for trial for Friday, the 20th instant, and that defendants be notified thereof.

And on the 23d February, 1852, the following entry was made in the minutes:

WHITE, STEVENS & Co. } 1988.
vs.
PITRE & ROSE.

This cause having been assigned for this day, and the parties not being present, it was ordered that it be continued.

And on the 10th day of May, 1852, the following entry was made in the minutes:

WHITE, STEVENS & Co. } 1988.
vs.
PITRE & ROSE.

This cause having been assigned for this day, was called up, and the following jurors were sworn and empanneled to try the same, viz: H. Leland, John C. Ricks, W. H. Cook, A. L. Addison, W. H. Yoe, A. W. Smith, W. H. Kitchen, Joseph West, James Robson, Thomas B. Taylor, J. H. Mann, and J. Ellis. Whereupon, after hearing testimony and argument of counsel and charge from the court, A. L. Addison, esq., was appointed foreman of the jury, and they retired to deliberate upon their verdict.

On the same day the following entry was made in the minutes:

WHITE, STEVENS & Co. } 1988.
vs.
PITRE & ROSE.

The court having prolonged its session to 5 o'clock p. m., and the jury in this cause not being able to agree upon a verdict, it was ordered, that they remain in custody of the marshal until seven o'clock p. m., with leave to hand in a sealed verdict should they sooner agree, and then be discharged until to-morrow morning at 10 o'clock.

Bill of exceptions, filed May 11th, 1852, nunc pro tunc, as of the 10th of May, 1853.

WHITE, STEVENS & Co. }
vs.
PITRE & ROSE.

Be it remembered, that on the trial of this cause the plaintiffs offered in evidence the testimony of W. W. McMain, a material witness, which was objected to by the defendants on the ground that according to the agreement of October 1847, hereto annexed and made part hereof, witness was interested in the event of the suit, having a right to one per cent. of the commissions claimed on the crop of defendants of the year 1850, if allowed; that the court sustained the objection, and the counsel for plaintiffs takes this bill of exceptions, appending said testimony, and making it a part thereof.

THEO. H. McCALEB, *U. S. judge.*

[REC. CXXX, D. T., 1853.]—2

Agreement referred to in the above.

Copy. W. W. McMain agrees with White, Stevens & Co. to go to New Orleans forthwith for their account, on the following terms, viz:

For all consignments made to the address of their house, or purchases made by their order, they are to pay him a commission of one per cent. For all sales made by him in New Orleans, to divide commissions equally when such commission does not exceed 2½ per cent., but when the commission is greater in consequence of previous advances, then White, Stevens & Co. to receive all such excess. W. W. McMain to draw bills exclusively on White, Stevens & Co., unless otherwise authorized by them. No advance to be made on growing crops, unless with the express permission of W., S. & Co. The accounts to be made up and settled annually. All shipments to be insured in New Orleans, and any return made on the premiums by the company to be retained by W. W. McMain.

(Signed) WHITE, STEVENS & CO.

Philadelphia, October 18th, 1847.

A true copy.

H. VOSE.

Deposition of W. W. McMain, appended to the foregoing bill of exceptions.

WHITE, STEVENS & Co.
vs.
PITRE & ROSE.

Testimony of W. W. McMain.—Examination in chief.

Witness is a commission merchant; has no partner; is also agent for plaintiffs; has been such about 7 years. Has done business with defendants, both as agent for plaintiffs and on witness's own account. Commenced business with defendants on the formation of their partnership in winter of '47'-8. Chief business that witness did with defendants on witness's own account, was raising money for them on accommodation paper. As agent witness advanced defendants certain sums of money on behalf of plaintiffs, with the agreement that defendants should consign their crops to plaintiffs to be sold; also furnishing them with plantation and other supplies as they might need them. When witness first began to do business with them, as agent for plaintiffs, he made an agreement with defendants, which agreement was that the amount of advances by plaintiffs should be $1,500 on the then growing crop; the defendants to consign their crop to plaintiffs. This was in January, 1848. The said crop was consigned to and sold by plaintiffs in Philadelphia. Plaintiffs in the next year went on to furnish supplies and advances, and defendants consigned to plaintiffs their crop as before. Accounts of plaintiffs with defendants were usually balanced in the month of November. An account was sent out in August, 1849, due November, 1849. The balance in favor of plaintiffs, amounting

to $2,539 95, was accepted and acknowledged by defendants. A last agreement was made by witness, as agent of plaintiffs, with Paschal Rose, who was the managing partner of the firm. In making this last agreement witness and Rose conversed fully concerning their affairs. At first Rose objected to allowing a d'ft of Pitre, the other partner, to be charged to the partnership concern, but afterwards waived all objections, and agreed that this draft, amounting to $4,000, should be charged to the partnership, and the account agreed to, and plaintiffs agreed to advance to the partnership the sum of $4,000. After the said agreements, defendants went on to draw drafts, order and receive supplies according to agreement, until their indebtedness with plaintiffs amounted to upwards of $4,000, which last account of plaintiffs with defendants was made out and transmitted to defendants some time about the 24th of August, 1850. No objection was made to said account, until the ensuing October, when a letter was received by witness, signed "Paschal Rose," objecting to the account, and refusing to consign his crop according to the agreement last entered into by plaintiffs with defendants; the agreement of March, 1850. Witness wrote on November 15th, notifying defendants that plaintiffs had taken up a vessel, giving them an opportunity to ship their crop in accordance with agreement. The said last rendered account of plaintiffs was transmitted to defendants at the same time with one kept by witness with defendants. In this letter of objection of defendants witness's account was not particularly mentioned, but the objection was a general one to the accounts.

Examination in chief.

On rendering the first account of plaintiffs with defendants, witness told Rose that he would not keep accounts with the individual members of the firm, but would *but would* charge every thing to the partnership. Rose at first expressed dissatisfaction at this, but was satisfied by explanation, and so expressed himself. Witness in almost every instance keeps an account in his own name with planters with whom he does business as agent for plaintiffs. The usual commission charged for selling a crop in Philadelphia is 5 p. c., and when the Philadelphia houses sell the crop here instead of shipping it, they charge the same commission.

Cross examination.

The counsel for the defendants objects to the testimony of W. W. McMain, on the ground that he is incompetent to testify in this suit from interest in the same, and, reserving all other legal objections except those relating to the form and manner of taking the testimony, proceeds to the following cross examination. Witness has a commission of one per cent. on the gross proceeds of all the crops which he procures to be consigned to plaintiffs. It is what is usually styled a one per cent. return commission. The last agreement which witness speaks of as

made with the defendant, Rose, witness thinks was made in March, 1850; after that time until October, 1850, witness had no intimation of any dissatisfaction with said agreement. Being asked how then it was that a short time after said conversation witness refused to accept a draft drawn on him by Pitre and Rose for three thousand six hundred and forty odd dollars; witness answered that his reason for not accepting was that he had already advanced the amount agreed upon, or so near it that he could not accept a draft for so large a sum. Being asked whether he can swear that Rose did not understand their agreement of March, 1850, to be an agreement to advance $4,000 to the partnership of Pitre and Rose, independently of the sum of $4,000 which had been advanced to Pitre in January, 1850; witness answers that he does not believe Rose could have misunderstood him, because he took all pains to explain the matter to him, and the $4,000 paid on Pitres' draft had been objected to previously and agreed to in this conversation.

Does not know of any mode of explaining Pitre and Roses' draft of $3,640 odd dollars above alluded to. He had not been written to on the subject. He did not allude to it or give the reasons for not accepting it in any of his subsequent letters.

W. W. McMAIN.

Sworn to and subscribed before me, this 1st day of May, A. D. 1851.

J. W. GURLEY, *Clerk*,
By W. CORNELIUS,
Deputy clerk.

The above statement of W. W. McMain, on being duly sworn to, is to be considered as his testimony, subject to the objection to his competency and other objections, other than those of form above reserved.

S. L. JOHNSON,
For defendants.

Endorsed: Filed May 1st, 1851.

J. W. GURLEY, *Clerk.*
By W. CORNELIUS,
Deputy clerk.

And on the 11th day of May, 1852, the following entry was made in the minutes:

WHITE, STEVENS & Co.
vs. } 1988.
PITRE & ROSE.

The jury in this cause having been discharged until this morning, were called, and the panel being complete, they informed the court that they had been unable to agree; whereupon, on suggestion of some of the members, they were remanded to their room for further deliberation.

And afterwards, on the 11th day of May, 1852, the following entry was made in the minutes:

WHITE, STEVENS & Co. vs. PITRE & ROSE. } 1988.

The jury in this cause, after some hours' further deliberation, returned into court, and on informing the court that there was no possibility of their agreeing upon a verdict, it was ordered that they be discharged from further consideration thereof.

And on the 19th day of January, 1853, the following entry was made in the minutes:

WHITE, STEVENS & Co. vs. PITRE & ROSE. } 1988.

This cause being assigned for this day, was called up, and the att'ys being absent, it was continued indefinitely.

And afterwards, to wit, on the 13th day of May, 1853, the following entry was made in the minutes:

WHITE, STEVENS & Co. vs. PITRE & ROSE. } 1988.

This cause was called for trial, when, on motion of Chas. A. Taylor, of counsel for pl'ffs, and on his suggesting to the court that Mathurin Pitre, one of the defendants in the above entitled cause, is dead, and has left no estate, it is ordered that a discontinuance be entered as to the said defendant. Whereupon the cause was proceeded with, and the following jurors were sworn and empaneled to try the issue between the parties, viz: S. A. Kingsland, J. Carrell, R. R. Fell, S. M. Todd, A. Cameron, H. H. Heddin, W. H. Pearce, M. Weisheimer, Thomas L. White, Ed. Thompson, H. H. Mansell, and W. E. Muir; when, after argument of counsel and charge from the court, they retired to their room to deliberate upon their verdict; J. Carrell appointed foreman.

And afterwards, on the said 13th day of May, 1853, the following entry was made in the minutes:

WHITE, STEVENS & Co. vs. PITRE & ROSE. } 1988.

The court having prolonged its session until three o'clock p. m., and the jury not having agreed upon their verdict, it was ordered, with the consent of the counsel of the respective parties, that the clerk should receive and record the verdict of the jury, should one be rendered; and that in case the jury should not be able to agree, their honors, or one of them, should be informed thereof. Whereupon their honors retired from the bench.

And afterwards, to wit, on the said 13th day of May, 1853, the following entry was made in the minutes:

WHITE, STEVENS & Co. vs. PITRE & ROSE. } 1988.

The jury in this cause desiring information on a question of law, his honor, J. A. Campbell, was informed thereof. Whereupon they were brought into court, and after receiving further charge, retired to their room, and shortly afterwards returned into court with the following as their verdict: "The jury, in the above suit, find for the plaintiffs in the sum of three hundred and five dollars and twenty-eight cents, with interest from date of judicial claim and costs of suit.

JOHN CARRELL, *Foreman.*"

Ordered that the verdict be recorded.

Motion for new trial.

Made, filed, and recorded in the minutes, 14th May, 1853.

WHITE, STEVENS & Co. vs. PITRE & ROSE. } 1988.

On motion of Charles A. Taylor, of counsel for plaintiffs, it is ordered that the defendant show cause, at 10 o'clock, a. m., on Saturday, the 21st instant, why a new trial should not be granted, on the ground that the verdict of the jury herein rendered is contrary to law and evidence.

Service accepted for defendant.

SIDNEY L. JOHNSON.

And on the 21st May, 1853, the following entry was made in the minutes:

WHITE, STEVENS & Co. vs. PITRE & ROSE. } 1988.

The rule herein taken for a new trial was argued, submitted to the court, and taken under advisement.

And afterwards, to wit, on the 26th day of May, 1853, the court rendered judgment on the motion for a new trial, and *and* an entry thereof was made in the minutes as follows:

WHITE, STEVENS & Co. vs. PITRE & ROSE. } 1988.

The application herein made for a new trial in this cause having been argued and submitted on a former day, and the court having considered the same, doth now order that said application be dismissed and a new trial refused.

And afterwards, to wit, on the 26th day of May, A. D. 1853, the court rendered a final judgment in this case, which was duly entered of record in the minutes; and on the 31st day of May the said final judgment was recorded in the judgment docket, and signed in the words and figures following:

Circuit court of the United States, fifth circuit and eastern district of Louisiana.

NEW ORLEANS, *Thursday, 26th May*, 1853.

Court met pursuant to adjournment. Present, Hon. J. A. Campbell, presiding judge. Present, Hon. Theo. H. McCaleb, district judge.

WHITE, STEVENS & Co.
vs. } 1988.
PITRE & ROSE.

The court being satisfied with the verdict of the jury rendered in this cause, doth now order, adjudge and decree, that plaintiffs, White, Stevens & Co., do have and recover judgment against the defendants, the administrators of the estate of Paschal Rose, deceased, viz: Lucinda Jane Noble, widow of the said Rose, and Caleb J. Tucker, for the sum of three hundred and five dollars and twenty-eight cents, with interest thereon at the rate of five per cent. per annum, from the 13th January, 1851, till paid, and costs.

Judgment rendered 26th May, 1853.
" signed 31st May, 1853.

J. A. CAMPBELL, *Judge, &c.*

Agreement.

Filed and appended to this transcript, 18th Nov., 1853.

U. S. CIRCUIT COURT,
Eastern district of Louisiana.

WHITE, STEVENS & Co.
vs.
PITRE & ROSE.

It is agreed and admitted that on the second trial of this cause, which was commenced on the 13th day of May, 1853, the counsel for the plaintiffs offered in evidence the same testimony of W. W. McMain which had been offered and rejected by the court on the first trial, as shown by the plaintiffs' bill of exceptions, tendered and signed by the judge, and found at page (12) twelve of the written transcript, prepared for the Supreme Court; that thereupon the counsel for defendant objected to the introduction of the said testimony, which objection was sustained by the court; that thereupon it was agreed by counsel in open court, and with the consent of the court, that the bill of exceptions aforesaid taken and signed on the first trial was to be considered as renewed, and as if it had been also taken and signed on the second trial.

And inasmuch as no entry of said agreement and consent of counsel appears to have been made on the minutes, this admission and agreement is to take the place of such entry, and the clerk of the circuit court is hereby authorized and requested to append a copy hereof to the said transcript as a part thereof.

CHARLES A. TAYLOR, *for plaintiffs.*
S. L. JOHNSON, *for def't.*

Petition for writ of error.—Filed 7th September, 1853.

To the honorable the judges of the circuit court of the United States for the eastern district of Louisiana, and fifth circuit of the United States:

The petition of Henry White and James Stevens, merchants, trading under the firm of White, Stevens & Co., respectfully represents, that they are dissatisfied with a final judgment rendered in the case of themselves *vs.* Pitre & Rose, No. 1988 on the docket of this honorable court, wherein petitioners are plaintiffs and Lucinda Jane Noble, widow of Paschal Rose, deceased, administratrix, and Caleb J. Tucker administrator of the succession of Paschal Rose, deceased, are defendants; which said judgment was rendered on the 26th of May, 1853, and signed on the 31st of the same month, all of which will more fully appear from the record of papers and proceedings in the cause; that petitioners are advised there is error to their prejudice in the said judgment, and are desirous to have the same revised by the honorable the Supreme Court of the United States. Wherefore petitioners pray that a writ of error be granted them in said cause, returnable to the Supreme Court of the United States according to law, upon petitioners giving bond in favor of said defendants for an amount to be fixed by your honors, conditioned as the law requires, with Kelly & Frazer as sureties, and complying with the requisites of the law; that the said defendants be cited in error, and all proper proceedings had in the matter according to law.

C. A. TAYLOR, *Att'y,*
Per JNO. FINNEY.
BENJAMIN, MICOU & FINNEY, *Att'ys.*

Order, endorsed on the foregoing petition.

Be it so, on plaintiffs giving bond in the sum of five hundred dollars, conditioned as the law requires, with the sureties herein named.

J. A. CAMPBELL,
Associate justice Supreme Court U. S.

United States of America, circuit court of the United states, fifth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

I, John W. Gurley, clerk of the circuit court of the United States, for the fifth circuit and eastern district of Louisana, do hereby certify,

that the foregoing 20 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had the case of White, Stevens & Co., vs. Pitre & Rose, No. 1988 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court at the city of New Or-
[SEAL.] leans, this first day of November, A. D. 1853.

J. W. GURLEY, *Clerk.*

Writ of error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or one of you, between White, Stevens & Co., and the administrators of the estate of Paschal Rose, deceased, viz: Caleb W. Tucker and Lucinda Jane Noble, the widow of the said Paschal Rose, a manifest error hath happened, to the great damage of the said White, Stevens & Co., as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this seventh of Sept., in the year of our Lord one thousand eight hundred and fifty-three.

J. W. GURLEY,
Clerk of the United States circuit court for eastern district of Louisiana.

Citation in error.

THE UNITED STATES OF AMERICA,

The President of the United States, to Lucinda Jane Noble, widow of Paschal Rose, deceased, and administratrix of his estate, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein White, Stevens & Co. are plaintiffs in error, and you et al. are defendants in error, to show cause,

if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 7th day of September, in the year of our Lord one thousand eight hundred and fifty-three.

J. A. CAMPBELL,
Associate justice of the Supreme Court of the U. S.

Marshal's return.

Received September 13th, 1853, and on the 25th of October, 1853, I served a copy of the within citation in error on Lucinda Jane Noble, administratrix of the estate of Paschal Rose, she being absent from this district, by handing the same to Caleb J. Tucker, the administrator of said estate, in the parish of Lafourche, State of Louisiana, 120 miles from New Orleans.

For M. MARIGNY, *U. S. marshal,*
EMILE MARY, *Dep. marshal.*

Citation in error.

THE UNITED STATES OF AMERICA.

The President of the United States, to Caleb J. Tucker, administrator of the estate of Paschal Rose, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, wherein White, Stevens & Co. are plaintiffs in error, and you et al. are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 7th day of September, in the year of our Lord one thousand eight hundred and fifty-three.

J. A. CAMPBELL,
Associate justice of the Supreme Court of the U. S.

Marshal's return.

Received September 13th, 1853; and on the 25th day of October, 1853, I served a copy of the within citation in error on Caleb J. Tucker, administrator of Paschal Rose, deceased, by handing the same to him in person, in the parish of Lafourche, State of Louisiana, 120 miles from New Orleans.

For M. MARIGNY, *U. S. marshal,*
EMILE MARY, *Dep. marshal.*

SUPREME COURT OF THE UNITED STATES.

No. 1.

Bill of Exceptions.

WHITE, STEVENS & Co.,
vs.
PASCHAL ROSE.

Circuit Court of the U. S., Eastern District of La.:

Upon the trial of this cause in the circuit court, the plaintiffs, to maintain their issue, in the first instance, introduced the clerk and book-keeper of W. W. McMain, one Vose, who proved that McMain was a commission merchant and factor in N. O., and was, besides, connected with the plaintiffs, as will appear by the papers hereto attached, marked *A;* that McMain was in the habit of disposing of the crops and making advances, and furnishing supplies to Pitre & Rose, the parties sued in this action, who carried on a plantation jointly. He further proved, that all the accounts of Pitre & Rose, and either of them, appeared on the books of McMain as between said McMain and them, and there was no account kept on the books between the plaintiffs and said persons, Pitre & Rose; and that all the drafts or orders for money or supplies were addressed to McMain only; and that on the books of the said McMain, the account attached to the petition is included in these accounts. On his cross-examination, he proved that the account attached, marked B, was rendered to Pitre & Rose after the failure of McMain, as well as the account attached to the petition; and that the account marked C was made out and remitted to them before his failure; and that the two first items of that account were included in an account marked D, hereto attached, and rendered a long time after, as well as other items, and form part of the balance of $2,537 $\frac{95}{100}$, on the account specified in the petition. He also proved that the item of $4,000, on the account B, "cash paid draft in favor of Tucker," was a draft drawn by Pitre to pay an individual debt of his own, and that the name of Rose was not upon the draft. The said witness could not explain how the items in the account attached to the petition were separated and ascertained as belonging to the plaintiffs, nor could he state that the moneys of the plaintiffs were specifically used to make these advances. He stated, however, that the said Pitre & Rose received the accounts about August, 1850, and did not reply to the letters or see the said McMain about them until several weeks afterwards, when one of them came to New Orleans.

The plaintiffs, further to maintain his issue, offered to read the deposition of W. W. McMain, hereto attached, and thereupon the defendant objected that the said McMain was not competent, and relied upon the evidence before the court, and the testimony itself, to establish his interest in some of the items of the account. And the court being of opinion that he had an interest, upon the testimony before the court, excluded the testimony, and thereupon the plaintiffs except, and pray the court to sign, seal and certify this bill of exceptions, which is done.

(Signed) J. A. CAMPBELL,
Associate Justice, S. C. U. S.

(Signed) THEO. H. McCALEB,
U. S. Judge.

(Copy)—A.

PHIL'A, *Oct'r 17th*, 1848.

To whom it may concern:

The bearer of this, W. W. McMain, esq., is our authorized agent to obtain consignments to our address, and make advances thereon, by drawing bills on us in the usual way.

(Signed) WHITE, STEVENS & CO.

A true copy:

F. VOSE.

(Copy)—A.

W. W. McMain agrees with White, Stevens & Co., to go to New Orleans forthwith for their account on the following terms—viz: for all consignments made to the address of their house, or purchases made by their order, they are to pay him a commission of one pr. ct.; for all sales made by him in N. Orleans, to divide commissions equally when such com'n does not exceed 2½ pr. ct.; but when the com'n is greater in consequence of previous advances, then White, Stevens & Co. to receive all such excess—W. W. McMain to draw bills exclusively on White, Stevens & Co., unless otherwise authorized by them.

No advance to be made on growing crops, unless with the express permission of the W. S. & Co.

The accounts to be made up and settled annually; all shipments to be insured in N. Orleans, and any return made on the premiums, by the company, to be retained by W. W. McMain.

(Signed) WHITE, STEVENS & CO.

Philad'a, Oct. 18th, 1847.

A true copy:

F. VOSE.

(Copy)—A.

PHILAD., *Oct'r 18th*, 1847.

W. W. McMAIN, Esq'r.

D'r Sir: We hereby authorize you to draw bills of exchange on us,

in New Orleans, in the usual way; we hereby agreeing to accept and pay all such bills.

Very truly, &c.,

WHITE, STEVENS & CO.

A true copy:

B,

F. VOSE.

Interest to Nov. 1st, 1850.

Messrs. PITRE & ROSE in acc't curr't with W. W. McMAIN. DR.

			Days.	
1849.				
Nov. 1	To insurance on sugar-house, 1848–'9.....	$95 00	365	$5 70
1850.				
Jan'y 8	" cash paid d'ft, favor J. W. Tucker.....	4,000 00	297	198 00
Feb'y 12	" commission 2½ p. c. on amount collected from Insurance Co. for sugar and molasses destroyed by fire Dec. 23.....	75 00	262	3 27
Mar. 30	" cash paid your dr'ft, C. Gaudé.....	62 87	215	2 25
April 8	" cash paid advertising engine.....	8 00	207	1 65
8	" invoice pork, "Mary Toley".....	40 28		
14	" cash paid your d'ft, J. B. Smith..... 250			
14	" " " " " N. Guinand..... 70			
14	" " " " " Capt. Dugas..... 1,200			
		1,520 00	201	50 92
May 15	" invoice corn, pr. Gipsy, (say Mary Toley,)	80 64	170	2 29
21	" " pork, pr. "Latona".....	86 71	154	2 37
27	" " corn and hams, pr. "Latona".....	48 40	158	1 29
June 3	" " " " "	80 32		
3	" insurance on sugar and molasses, Dec.....	7 50	151	2 21
22	" invoice corn and pork, pr. "Eliska".....	266 53		
22	" set of truss hoops.....	5 50	132	5 93
July 2	" cash paid d'ft, favor Jno. Collins.....	1,145 00		
2	" invoice shoulders, "T. M. S.".....	44 44	122	24 17
Aug't 9	" " pork, corn and lard, "T. M. S."...	218 61		
9	" commission 2½ p. c. for endorsing and negotiating P. Rose's note favor M. Pitre...	75 00	84	4 11
23	" balance of interest to credit.....			47 40
23	" " " account " "	352 60		
		$8,212 40		$351 61

CREDIT.

1850.				
Jan'y 9	By amount rec'd of Memphis Ins. Co. for loss by burning of sugar-house Dec'r 23.....	$5,500 00	296	271 22
May 4th	" nt. prds. of P. Rose's note favor M. Pitre 3,000 dollars, due March 1|4, 1850.....	2,665 00	181	80 39
Aug. 23	" balance of interest.....	47 40		
		$8,212 40		$351 61
Aug. 23	By balance due Mess. Pitre & Rose Nov. 1, 1850, E. E.	$352 60		

NEW ORLEANS, *August 23d*, 1850.

W. W. McMAIN,
Pr. P. ROSE.

Messrs. PITRE & ROSE in acc't current with W. W. McMAIN, DR.

1849.			Int.	Days.
May 15	To balance due White, Stevens & Co., as per acc't ren'd	$436 16	$21 44	295
Sept. 26	To balance due White, Stevens & Co., from M. Pitre	2,511 54	67 39	166
" "	To commission 2½ p. c. on am't of balances due	73 69		
Nov. 1	" paid for insurance in sugar-house	2 50	05	126
" 11	" " your dr'ft	100 00	1 91	115
" 18	" " Mr. Rose	250 00	4 50	108
1849.	" " for pork as p'r bill rendered	56 88	1 02	108
Jan'y 4	" " for sundries	37 46	38	61
" 12	" " for furniture	111 36	98	53
" 22	" " for d'ft fav. A. C. Williams	30 00	21	43
" "	" " " " N. H. Goise	35 00	25	43
" 30	" " " " A. H. Tyson	33 68	19	35
Feb'y 3	" " " " H. O. Stevens	76 50	39	31
Jan'y 26	" " for sundries as pr. bill ren'd	69 63	45	39
Feb'y 8	" " for P. Rose, (int. & exchange on $8,200)	1,090 45		
March 4	" " d'ft fav. J. W. Moss	400 00	16	2
" "	" exchange ½ p. c. $409 38, $2 04; ¾ p. c. on $283 45, $2 12; 1 p. c. $110 18, $1 10; 1½ p. c. $400 00, $6 00	11 26		
		$5,326 11	$99 32	
	Total,	$5,425 43		

CREDIT.

March 6	By amount due you, Aug. 4, '49 as pr. ac. sales $5,650 36. Len. int. 151 days, $140 53, and exchange 1½ p. c. $84 75, $225 28	$5,425 08		
" "	By amount due M. Pitre, April 3, '48, $16 75, with 337 days int	17 69		
		$5,442 77		
	Amount due Mess. Pitre & Rose, $17 34. E. E.			

NEW ORLEANS, *March* 6, 1849.

13

D.

Interest to November 1st, 1849.

Mess. PITRE & ROSE in ac. cur'nt with WHITE, STEVENS & Co., DR.

				Mo. Dys.	
1848.					
May 15	To balance of W. W. McMain's acc't with you.....$436 16				
"	" 2½ per cent. commis'n on $436 16 10 90		$447 06	17 17	$39 25
Nov. 10	" cash p'd insurance on sugar and molasses on plant.....		2 50	11 22	11
11	" do " your draft on W. W. McMain, N. Ol's, $100, ex. 50.....		100 50	11 21	5 85
Dec'r 18	" do " Mr. Rose on do $250, ex. 1 25.		251 25	10 14	13 14
15	" do " for supplies on do.....		56 88	10 17	3 01
1849.					
Jan'y 8	" do " " do do.....		37 46	9 24	1 81
12	" do " " furniture for Mr. Rose, do...		111 36	9 20	5 37
22	" do " dft. to A. C. Williams do $30 22		30 22	9 10	3 03
"	" do " " N. H. Goise do 35 26 ...		35 26		
26	" do " for supplies do		69 63	9 06	3 18
30	" do " dft. to A. H. Tyson do 33 68; 34		34 02	9 02	1 54
Feb'y 3	" do " " H.O. Stevens do 76 50; 76		77 26	8 29	3 45
8	" do " Mr. Rose do 1,079 66; 10 79 ..		1,090 45	8 24	47 96
March 2	" do " dft. to J. W. Moss do 400; 6..		406 00	7 30	16 24
7	" do " adv. on gr'ng crop do 1,500; 22 50		1,522 50	7 25	59 61
8	" do " for supplies do		44 08	7 24	1 72
14	" do " Mr. Pitre's dft. to Hazard & Green do 30 80; 46.....		31 26	7 18	1 17
April 14	" do " for supplies do		88 08	6 18	2 90
19	" do " " do do		119 97	6 13	3 86
23	" do " dft. to F. Webb do $75; 1 13..		76 13	6 09	2 39
May 1	" do " for supplies do.....		70 94	6 00	2 13
14	" do " " do do.....		40 77	5 18	1 12
23	" do " " do do.....		190 25	5 09	5 04
June 27	" do " " do do.....		45 50	4 05	94
July 20	" do " " do do.....		212 05	3 12	3 60
Aug. 17	" balance of Maturin Pitre's ac't made up to Nov. 1, 1849.....		2,853 38		
"	" balance of interest.....		145 55		
			$8,190 31		$228 42

CREDIT.

1849.					
Feb'y 20	By net proceeds sales of sugar and molasses, received in schooner J. H. Counce, due August 4, 1849		$5,650 36	2 28	$82 87
Aug. 17	" balance of interest to debit.....				145 55
"	" do " account "		2,539 95		
			$8,190 31		$228 42
1849.					
Aug. 17	To balance due White, Stevens & Co., November 1, 1849.....$2,539 95				
	E. & O. E.				

PHILADELPHIA, *August* 17, 1849.

WHITE, STEVENS & CO.

Account annexed to petition—Interest to November 1st, 1850.

Mess. PITRE & ROSE in ac't cur't with WHITE, STEVENS & Co., DR.

				M.	Dys.	
1849.						
Aug't 17	To balance due, Nov., 1849, as per account rendered.....$2,539 95					
July 6	" cash paid for sundries...$20 70					
"	" 3 m. 26 and int. to Nov. 1 40					
	21 10					
Nov'r 1	" 2½ per cent. commission on $2,561 05..... 64 02					
		$2,625 07	}	12		$157 65
"	" cash paid insurance on sugar and molas's	2 50	}			
Dec'r 1	" " sundries.....	46 99		11		2 58
6	" " M. Pitre's note, $800, Ex. 8....	808 00		10	26	43 90
	9 86					
25	" " sundries.....40 60					
		50 46		10	7	2 56
26	" " d'ft fav. E. Carline, $365; 2 75	367 75		10	6	18 77
29	" " " Solomon,.....$44; 33	44 33		10	3	2 22
1850.						
Jan'y 1	" " for lime.....	5 40		10		25
4	" " d'ft fav. M. Grimas, $200; 1 75	201 75		9	28	10 03
14	" " for sundries.....	41 70		9	18	2 02
17	" " d'ft fav. H. O. Stevens, 64 27; 64	64 91		9	15	3 09
18	" " " E. Jarbon,..$378, 3 78	381 78		9	14	18 08
21	" " for sundries.....	68 16		9	11	3 18
24	" " insurance on sugar and molasses.....	5 00		9	8	23
25	" " d'ft favor J. Niel, 26 25, E. 21.	26 51		9	7	1 20
28	" " for sundries.....	43 24		9	4	1 97
Feb'y 4	" " insurance sugar and molas's	2 50		8	28	10
7	" " subscription to "Delta," $3; E. 3	3 03		8	25	13
11	" " for sundries.....	51 65	}	8	21	2 35
"	" " insurance sugar and molas's	2 50	}			
21	" " sundries.....	38 38		8	11	1 59
27	" " drf't fav. G. Gansevert, 198 87 E. 1 97.....	200 86		8	5	8 21
Mar. 4	" " d'ft fav. J. M. Denman....175					
"	" " " S. Griven 130					
"	" " " G. Jackson, 1,000, 1,305, 1,305.....	1,318 05		7	28	52 28
	Carried forward.....	$6,400 52				$332 39
6	" " df't fav. J. B. Smith, $300					
"	" " " W. Hall, 804 46; 1,104 46 E. 10 04.....	$1,115 50		7	26	$43 86
7	" " " P. Marchias, 527 27; 5 27.....	532 54		7	25	20 85
8	" " " P. Cabasies.....20					
"	" " " O. B. Richard, 464 53; 484 53; 4 84.....	489 38		7	24	19 07
11	" " for sundries.....	40 67	}	7	21	4 00
"	" " d'ft fav. G. Le Garde...$63; 63	63 63	}			
19	" " " E. Murphy..$150; 1 50	151 50		7	13	5 63
20	" " " J. D. Brown, 22 61					
"	" " " A. B. Ragan, 194 37					
"	" " " T. E. Ewing, 51 00					
	267 98; 2 68	270 66				

			M.	D.	
1850.					
Mar. 20	To cash paid for sundries (M. Pitre).....	$113 08	7	12	14 29
22	" " insurance on sugar-house...	126 50	7	10	4 63
26	" " d'ft fav. J. Le Blanc, 31 80; E. 31	32 11	7	6	1 15
28	" " " O. Richard.....$80; 80	80 80	7	4	2 88
April 20	" " for sundries.....	111 96	1	12	3 58
23	" " d'ft favor J. H. Meylin.....	16 25	6	9	50
July 25	" Balance of interest.....	420 45			
		$9,965 55			$452 75

CREDIT.

1850.					
Feb'y 4	By net proceeds sugar and molasses, per "Telegraph," due Aug. 3.....	$2,144 90	2	29	31 82
April 29	" do do "H. R. Hyler," Oct. 31....	2,900 35		1	48
July 25	" Balance of interest to debit.....				420 45
"	" do account do	4,920 30			
		$9,965 35			$452 75
1850.					
July 25	To balance due White, Stevens & Co., Nov. 1, 1850..... E. & O. E.	$4,920 30			

PHILADELPHIA, *July 25th*, 1850.

Filed December 30th, 1850, with petition.

J. W. GURLEY, *Clerk*,
By W. CORNELIUS, *Dep. Clerk*.

Testimony of W. W. McMain—Examination in chief.

WHITE, STEVENS & CO.,
vs.
PITRE & ROSE.

Witness is a com. merchant; has no partner; is also ag't for plff's; has been such about 7 years; has done business with def'ts, both as ag't for pl'ffs and on witness's own acc't; commenced business with def'ts on the formation of their partnership in winter of 47, '8; chief business that witness did with def'ts, on witness own acc't, was raising money for them on accommodation papers. As ag't, witness advanced def'ts certain sums of money in behalf of pl'ffs, with the agreement that def'ts should consign their crops to pl'ffs to be sold; also furnishing them with plantation and other supplies, as they might need them. When witness first began to do business with them as agent for pl'ffs, he made an agreement with def'ts, which agreement was, that the am't of advances by plff's should be $1,815 00 on the then growing crop, the def'ts to consign their crop to pl'ffs; this was in January, 1848. The

said crop was consigned to, and sold by, pl'ffs, in Phila.; pl'ffs, on the next year, went on to furnish supplies and advances, and def'ts consigned to pl'ffs their crop as before; acc'ts of pl'ffs with def'ts were usually balanced in the month November. An acc't was sent out in August, 1849, due Nov'r, 1849. The balance in favor of pl'ffs, am'ting to $2,539 95, was accepted and acknowledged by def't; a last agreement was made by witness as ag't of pl'ffs, with Paschal Rose, who was the managing partner of the firm. In making this last agreement, witness and Rose conversed fully concerning their affairs; at first Rose objected to allowing a draft of Pitre, the other partner, to be charged to the partnership concern, but afterwards waived all objections, and agreed that this draft, am'ting to $4,000, should be charged to the partnership and the acc't agreed to, and pl'ffs agreed to advance to the partnership the sum of $4,000; after the said agreement, def'ts went on to draw drafts, order and receive supplies according to agreement, until their indebtedness with pl'ffs am'ted to upwards of $4,000, which last account of pl'ffs with def'ts was made out and transmitted to def'ts, sometime about the 24th of August, 1850. No objection was made to said acc't until the ensuing October, when a letter was received by witness signed "Paschal Rose," objecting to the account and refusing to consign his crop according to the agreement last entered into by pl'ffs with def'ts—the agreement of March, 1850. Witness wrote on Nov'r 15, notifying def'ts that pl'ffs had taken up a vessel, giving them an opportunity to ship their crop in accordance with agreement. The said last rendered account of plff's was transmitted to def'ts at the same time with one kept by witness with def'ts. In this letter of objection of def'ts, witness acc't was not particularly mentioned, but the objection was a general one to the acc'ts. On rendering the first acc't of pl'ffs with def'ts, witness told Rose that he would not keep accounts with the individual members of the firm, but would charge everything to the partnership; Rose at first expressed dissatisfaction at this, but was satisfied by explanation, and so expressed himself; witness, in almost every instance, keeps an acc't in his own name, with planters with whom he does business as agent for pl'ffs. The usual commission charged for selling a crop in Phila. is 5 pr. ct., and when the Phila. houses sell the crop here, instead of shipping it, they charge the same commission.

Cross-examination.

The counsel for defendants objects to the testimony of W. W. McMain, on the ground that he is incompetent to testify in this suit, from interest in the same; and reserving all other legal objections, except those relating to the form and manner of taking the testimony, proceeds to the following cross-examination.

Witness has commission of one per cent. on the gross proceeds of all crops which he procures to be consigned to plaintiffs. It is what is usually styled a one per cent. return commission. The last agreement, which witness speaks of as made with the defendant Rose, witness thinks, was

made in March, 1850. After that time, until October, 1850, witness had no *intervention* of any dissatisfaction with said agreement. Being asked how, then, it was that, a short time after said conversation, witness refused to accept a draft drawn on him by Pitre & Rose for three thousand six hundred and forty odd dollars, witness answered that his reasons for not accepting it was, that he had already advanced the amount agreed upon, or so near it, that he could not accept a draft for so large a sum. Being asked whether he can swear that Rose did not understand their agreement of March, 1850, to be an agreement to advance $4,000 to the partnership of Pitre & Rose, independently of the sum of $4,000 which had been advanced to Pitre in January, 1850, witness answers that he does not believe Rose could have misunderstood him, because he took all pains to explain the matter to him, and the $4,000 paid on Pitre's draft had been objected to previously, and agreed to in this conversation.

Does not know of any mode of explaining Pitre & Rose's draft of $3,640 odd dollars, above alluded to. He had not been written to on the subject. He did not allude to it, or give his reasons for not accepting it, in any of his subsequent letters.

W. W. McMAIN.

Sworn to and subscribed before me this 1st day of May, A. D. 1851.

J. W. GURLEY, *Clerk*,
By WILLIAM CORNELIUS, *Dep. Ck.*

The above statement of W. W. McMain, on being duly sworn to, is to be considered as his testimony, subject to his competency and other objections other than those of form, above reserved.

New Orleans, May 1st, 1851.

S. L. JOHNSON, *for Defts.*

Filed May 1st, 1851.

J. W. GURLEY, *Clerk*,
By WM. CORNELIUS, *Dep. Ck.*

U. S. CIRCUIT COURT, EASTERN DISTRICT OF LOUISIANA,
CLERK'S OFFICE.

I certify the foregoing to be a true copy of the original bill of exceptions and documents thereto annexed on file in this office.

Witness my hand and the seal of the said court at New Orleans, this 26th November, A. D. 1856.

[SEAL.]

J. W. GURLEY, *Clerk.*